

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE P.VISHWANATHA SHETTY

WRIT PETITION No.13031/1998

Between :

Subbe Gowda,
S/o Beeregowda,
age major,
Occ.Agriculture,
r/a Gonibeedu,
Tal. Bhadravathi,
Dist. Shimoga.

... Petitioner.

(By Sri.Ashok S Menasinkai, Adv..)

And:

1. The State of Karnataka,
by its Secretary,
Department of Revenue,
Vidhana Soudha,
Bangalore.

2. The Tahsildar,
Bhadravathi Taluk.

3. The Chairman,
Taluk Level Land
Regularisation Committee,
Tahsildar Office,
Bhadravathi Taluk.

... Respondents.

(By Sri.Kotian Addl. GA.,)

This WP is filed under Articles 226 & 227
of the Constitution of India praying to quash
the order vide Annex.G dt.1.4.98 by the Tahsildar
& etc,

326

This writ petition coming on for preliminary hearing this day, the court made the following E-

O R D E R

Sri B.E.Kotian, learned Government Advocate is directed to take notice to respondents.

2. Though this petition is posted for preliminary hearing with the consent of the learned counsel appearing for the petitioner and the learned Government Advocate, this petition is taken up for final hearing and disposed of, by this order.

3. The petitioner in this petition claims to be in unauthorised occupation of Government land measuring 36 guntas in Survey No.37, at Gonibeedu village, Bhadavathi Taluk, ever since the year 1974.

4. Since his claim for regularisation was not considered, the petitioner had approached this court by filing Writ Petition No.15885/97 in and the said writ petition this court by its order dated 24th June, 1997 directed the Authorities

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327

to examine the case of the petitioner for regularisation of his unauthorised occupation. A copy of the order is marked as Annexure-F to this petition. However, inspite of the direction given by this court to examine the case of the petitioner for regularisation of his unauthorised occupation in respect of the land referred to above, by means of ^{the 2nd respondent} his order/communication dated 1st April, 1996, a copy of which has been produced as Annexure-G has rejected the claim of the petitioner on the ground that the petitioner did not file Form No.50. The said order/communication has been called in question in this petition.

5. Sri Ashok S Menasinkai, learned counsel for the petitioner submits that the order impugned is passed in utter disregard of the direction given by this court in Order, Annexure-F, wherein this court had directed the Authorities to examine the case of the petitioner seeking regularisation of his

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unauthorised occupation on the basis of the application filed earlier; and under these circumstances, the 2nd respondent has seriously erred in law in rejecting the claim of the petitioner on the ground that the petitioner did not file Form No.50. It is his submission that since the claim of the petitioner seeking regularisation of his unauthorised occupation was pending consideration even ^{prior to} ~~before~~ coming into force of Section 94-A of the Act, this Court ^{that} keeping in mind/the application earlier filed by the petitioner was pending consideration, gave a direction to the Authorities to examine the case of the petitioner to regularise his unauthorised occupation in respect of land referred to above.

6. Sri Kotian, learned Government Advocate however, tried to support the order/communication ^{since} ~~the~~ impugned on the ground that/the petitioner did not file Form No.50, the 2nd respondent was justified in issuing the communication impugned in this petition.

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329

7. I am unable to accede to the submission of the learned Government Advocate for two reasons. Firstly, the claim of the petitioner for regularisation of his unauthorised occupation in respect of the land in question has been pending adjudication long prior to the coming into force of Section 94A of the Act, and the order passed rejecting his claim was the subject matter of dispute before this court in Writ Petition referred to above. Under these circumstances, I am of the view, that having regard to the facts and circumstances of the case, the application filed by the petitioner prior to coming into force of Section 94A of the Act itself must be treated as an application filed under Section 94-A of the Act seeking regularisation of the land in question. Secondly, when this court in the Writ Petition referred to above had specifically directed the Authorities to examine the case seeking regularisation of ^{his} alleged unauthorised occupation of the land in question, it was not

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330

permissible for the 2nd respondent to reject the claim on the ground that the petitioner has not filed Form No.50 as provided under Section 94-A of the Act. The Authorities are bound by the order made by this Court in Writ petition referred to above.

8. For the reasons stated above, the order/communication, Annexure-G is liable to be quashed. Accordingly, it is quashed. The 3rd respondent Committee is directed to consider the claim of the petitioner for regularisation of his unauthorised occupation in respect of the land referred to above on the basis of the application stated to have been filed and which have been referred to in order Annexure-F, as expeditiously as possible and at any event of the matter, not later than four months' from the date of receipt of a copy of this order, in accordance with law and after giving an opportunity to the petitioner.

9. Accordingly, this petition is allowed and disposed of. Rule is issued and made absolute.

Writ

331

10. Sri B.E.Kotian, learned Government Advocate is given four weeks time to file his memo of appearance.

Sd/-
JUDGE



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